a false gloss of importance on what is obvious and intended. The rest is the assumption of a self-effacing posture for very self-interested reasons.

The networks claim, for example, that they dominate no relevant market, particularly in light of the growth of alternative markets for programming and viewing.[49] They claim to be only "distributors" of programming.[50] However, as observed by the Coalition's consultants, "[N]etworks have integrated backward into programming and forward into local broadcasting."[51] Similarly, the MPAA points out that "With the removal of all limitations on network in-house programming, networks can be expected to rely more heavily on their own productions to fill their program schedules."[52] This reality belies any network claim to be just another distributor.

ABC also flogs the Prime Time Access Rule for limiting demand for network programming, limiting network ad inventory, and limiting competition to non-broadcast media.[53] However, limiting demand for network programming by replacing it with demand for non-network prime time programming was precisely what the rule was supposed to do. As to ad inventory and competition to non-

[49]NBC at 9, 23.

[50]NBC at 13.

[51]W&W at 7.

[52]MPAA at 13.

[53]ABC at 11-12.

broadcast media, the Prime Time Access Rule has stimulated a more competitive broadcast industry, which now holds the promise of a six rather than three network universe. Such a broadcast industry will offer more ad inventory and compete more vigorously with non-broadcast media. The networks seem to think that they should remain the only strong broadcast competitors, and, certainly, repeal of the Prime Time Access Rule would make their dreams come true. To dash the promise of a more diverse and competitive broadcast industry simply to reserve the exalted position of the entrenched networks would serve no known or valid public interest.

B. The Markets for Network and Syndicated Off-network Programming

Much is made of the proposition that off-network syndication would be more lucrative if affiliates of the three entrenched networks could show off-network programs in prime access.[54] In one sense, INTV hardly may deny that off-network program prices would increase if affiliates of the three entrenched networks were permitted to substitute off-network programs for first-run programs in prime access.[55]

[54]Coalition at 14, 20 *et seq.*; ABC at 13; NASA at 18; CBS at 13.

[55]Those affiliates are stronger financially and have every incentive to switch to a more profitable genre of programming. *Economic Report* at 49-51. Contrary to what the Coalition suggests (Coalition at 22), however, the switch to off-network programming by affiliates would diminish rather than enhance diversity and viewer welfare. Affiliates would be showing programs previously shown on independents, while independents would be showing less attractive programming than now shown on affiliates. INTV at 68.

On the other hand, the example trumpeted by the Coalition says nothing. The Coalition states that ABC's Roseanne (18.2 rating/28 share) collected $1.8 million per episode, whereas Fox's *Married...with Children* (12.9 rating/20 share) collected $2.4 million per episode a year earlier.[56] This, according to the Coalition can be traced to the fact that affiliates could acquire *Married...with Children* , but not *Roseanne.* However, this comparison is highly questionable (albeit very appealing superficially). First, few affiliates were interested in *Married...with Children* . Only four affiliates bought the show for access in the top 50 markets.[57] Five affiliates bought the show for access in the second 50 markets.[58] Therefore, the ability of affiliates to acquire the program likely had little influence on the price of the show. Second, comparing ratings on Fox with ratings on an entrenched network is improper in light of the coverage difference and UHF handicap, which would tend to depress ratings of a show on Fox.[59] Third, the Coalition fails to consider the competition for off-network programs in each year -- a factor which might have a considerable effect on program prices.[60] Fourth, because the Fox network achieves

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[56]Coalition at 21.

[57]INTV, Exhibit 2 at 5.

[58]INTV, Exhibit 2 at 6.

[59]*See Economic Report* at 41-43.

[60]One also might be constrained to note that the Coalition was more than somewhat glib as to sources of its rating and price information. One trade press article in 1993 estimated very similar license fees for *Roseanne* and *Married ...with Children* ($1.7 million versus $1.4-1.6 million). *Electronic Media,* October 4, 1993, at 40.

lower ratings, one may assume that it pays less than the three entrenched networks for its network programs. This may leave the producer with a greater deficit, which must be recouped through higher syndication prices.[61] Thus, the validity of the comparison is suspect and unworthy of any weight in the Commission's deliberations.

Indeed, the overall analysis offered by those seeking repeal of the off-network prohibition also is myopic. As so rightly suggested by NBC, growth in the number of video outlets increases demand for programming.[62] No one, however, considers that the growth of independent television has increased the demand for programming of all sorts, including quite prominently off-network programming, the staple of independent prime access.[63] Thus, whereas producers may well be disadvantaged at the margin by a market bereft of affiliate buyers for off-network programming in access, they gain a more substantial benefit as the number and financial vitality of independent stations increases. These independent stations buy programs to fill a 24-hour schedule, including, but not limited to, the access hour.

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[61]In practice, syndicators sell popular programs by seeking bids from selected stations against a floor price. The higher revenue from *Married ...with Children*, therefore, may be a function of a popular program entering the market with a higher bidding floor at the outset.

[62]NBC at 10.

[63]A virtual chorus is raised suggesting that the Prime Time Access Rule had nothing to do with the growth of independent television. NASA at 17; NBC at 31; Bureau at 31; CBS at 7. Those who have demanded proof now have it. The Prime Time Access Rule has been financially beneficial to independent stations -- a fact which has prompted whines, but no real dispute. This benefit has offset the harm of the UHF handicap and the growth of cable television sufficiently to entice new entrants into independent television, thereby stimulating growth in the number of stations. *See Economic Report* at 56; *see also* MPAA at 6.

These independent stations ultimately become affiliates of emerging networks, which themselves become new buyers of the most lucrative type of programming, original, first-run prime time programming![64]

The fact that off-Fox programming may join the competition for access slots also conjures an issue where none exists. Fox network programming is produced by a variety of producers. From the perspective of producers, as well as station buyers of off-network and off-Fox programming, whether the program appears on an emerging or an entrenched network may be of little concern *vis-a-vis* the back-end potential, which will exist in either case *if the show is a success.* The much more significant fact is the advent of emerging networks which provide a venue for production of network programming and growth in the number of independent stations, thereby creating more prime access slots to fill on independents. By strengthening the foundation of independent television, increasing the number of buyers in the market, the Prime Time Access Rule has enhanced the markets for network and off-network programming.[65]

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[64]For this reason, the complaint that producers of network programming are disadvantaged by the Prime Time Access Rule are equally myopic and fail to consider the advantages flowing from a market for prime time programming growing from three to possibly six buyers.

[65]For the same reason, the complaint that producers are losing access to prime time due to the formation of emerging networks also is horribly myopic. Coalition at 9. What would be far more important to a network program producer is having more networks and more stations to sell to either at the first-run network or subsequent off-network phase.

Moreover, the half-hour sitcom is in no danger of joining the list of endangered species. Network schedules continue to include numerous sitcoms, the more successful of which continue to flow into off-network syndication.[66]

Finally, the Coalition again bemoans the supposed reduction in shelf space for off-network programming occasioned by the emergence of the Fox network.[67] INTV, however, already has demonstrated that the effect of Fox's prime time programming on the off-network syndication market has been marginal.[68]

No credible argument can be made, therefore, that the Prime Time Access Rule has impeded competition or otherwise diminished the market for network and off-network programming. To the contrary, it has promoted growth of new stations and networks which considerably enhance the market for network and off-network programming alike.

C. The First-run Syndication Market

Many proponents of repeal of the Prime Time Access Rule or off-network Prohibition proclaim the vigor and vitality of first-run syndication.[69] They then posit that repeal of the Prime Time Access Rule or the off-network provision could

[66] *See, e.g., Broadcasting & Cable* (May 22, 1995) at 8.

[67] Coalition at 17.

[68] INTV, Exhibit 3.

[69] *See, e.g., CAC* at 27.

have no adverse effect on this highly competitive market.[70] These arguments ignore the real issue, which involves the *Prime Time* Access Rule.[71]

Prime time still is *prime* time. It is a distinct market for programming and advertising. Broadcasting still is broadcasting. It is the pre-eminent prime time medium for which no match exists in non-broadcast media. More people watch television during prime time. More viewers watch broadcast television in prime time.[72] Producers still lust for placement of their programming on network prime time schedules. Producers and first-run syndicators also vigorously compete for prime access slots on network affiliates.[73] Arguments which focus broadly on the entire first-run syndication market and include non-broadcast media ignore this fundamental reality.

Contrary to the assertions of the entrenched networks and others favoring at least partial dismantling of the Prime Time Access Rule, repeal of the rule or the off-network provision would destroy the market for first-run non-network syndicated programming. First, affiliates which now use first-run syndicated programming

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[70]Bureau at 11, 13; NASA at 12, 21; Coalition at 7, 12.

[71]As acknowledged by the Coalition, the Prime Time Access Rule does apply to prime time! Coalition at 5.

[72]*Economic Analysis*, Table K-7 at 151.

[73]INTV , Exhibit 4.

would shift to off-network programming. Those who argue otherwise ignore the significant differences in the economics of off-network and first-run syndication. Use of off-network programming would be a much more profitable strategy for affiliates.[74] Although they point to the use of first-run programming in non-PTAR markets, they similarly ignore that the market for first-run syndicated programming is made in the top 50 markets.[75]

Second, they argue incorrectly that popular first-run programming now on affiliates would be picked up by independents.[76] They ignore the continuing effect of the UHF handicap, as well as the basic economics of first-run production. Independents simply could not afford to buy *Wheel* or *Jeopardy* at the prices which would have to be charged to cover their costs.[77] Nonetheless, they point to the use of first-run programming by non-Fox independents in PTAR markets as evidence that independents could pick up the slack in the first-run market. Their evidence, however, is suspect and largely inconsequential. The networks' *Economic Analysis* reports that independent stations were filling 39% of their prime access hours with first-run programming, based on an analysis of November, 1994, programming.[78] In

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[74]INTV at 49 *et seq.*; *Economic Report* at 77 *et seq.*

[75]*See, e.g.*, NBC at 22-23, Coalition at 7, n.43; INTV at 47.

[76]NBC at 21,33; CBS at 12.

[77]INTV at 52; *Economic Report* at 63 *et seq.*

[78]*Economic Analysis*, Table H-1 at 133.

contrast, INTV's analysis of November, 1993, programming showed that non-Fox independents were filling 17.4% of their access hour with first-run programming.[79] INTV also has analyzed February, 1995, program schedules, which show that non-Fox independents filled 24.4% of their access hours with first-run programming.[80] Thus, the results of the networks' analysis appear anomalous.[81] Moreover, none of the most popular first-run syndicated programs is widely-used by independents, thus confirming that independent stations alone would not constitute a viable vehicle for such programming.[82]

They argue also that the popular, expensive programs that now are sold to network affiliates for access could just as easily be produced and sold to a cable network, independent station, or other non-broadcast medium.[83] This is hardly the case. No doubt exists that some off-network syndicated programs are sold to cable networks. However, the economics of off-network syndication are very different

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[79]INTV, Exhibit 2 at 1.

[80]*See* Exhibit Two, attached hereto.

[81]This spike in use of first-run programming might be explained in several ways. It may be sample based, *i.e.*, non-general audience independents may have been included. Their first-run programming hardly would be the sort of first-run programming which independents allegedly would turn to if the Prime Time Access Rule were repealed. It also may reflect inclusion of newly-independent stations like KSAZ, Phoenix, which lost its CBS affiliation in September, 1995, after its PTAR-governed access schedule was set.

[82]*See* Exhibit Two. Appearances of first-run access hits like *Wheel* and *Jeopardy* rarely if ever on independent program schedules. INTV at 53.

[83]NBC at 24.

from the economics of first-run syndication. In the case of off-network syndication, the program already is produced. Any revenue from syndication which exceeds the transaction and distribution costs will be beneficial to the producer. Therefore, off-network programming which fails or shows no promise in broadcast syndication still can generate revenue (albeit less revenue) for the producer via syndication to cable or other non-broadcast media. First-run syndication fees, however, must cover production costs of the program, as well as distribution and transaction costs. Prime time quality program production costs are considerable and cannot be recouped except via prime time broadcast exhibition on the powerful VHF affiliates of the entrenched networks.[84]

The only attention specifically paid to prime access is the complaint that the Prime Time Access Rule has provided an artificial market for a few syndicators who have managed to be successful in prime access first-run programming.[85] They neglect to consider several salient factors. First, the Prime Time Access Rule was designed and intended to establish a market for non-network prime time programming.[86] To decry that it has done so is ridiculous. Second, as is obvious

[84] *See Economic Report* at 63 *et seq.*

[85]ABC at 13, 20; CBS at 7. This, of course, is a tacit admission that these successful syndicators would be displaced from prime access in short order if the Prime Time Access Rule were repealed.

[86]Indeed, as CBS observes, the purpose of the rule was to make prime time available to non-network program sources. CBS at 5.

even to NBC, only a few syndicators can succeed in access at any given time.[87] The market consists of at most one hour of programming on each of three affiliates in 50 markets. Numerous producers and syndicators have sought to compete with first-run programs for prime access, but success -- as is no less the case with network programming -- often is elusive (hardly a surprise in a highly competitive market).[88] What they seek in the form of the Prime Time Access Rule is not success, but only the ability to compete, and producers are anxious to continue competing in that market.[89] However, program producers are adamant in asserting that access to prime access on *affiliates* is the *sine qua non* of even the ability to compete in the market for non-network prime access programming.[90]

The Coalition attempts to make much of a statement attributed to king World's Steve Palley to the effect that repeal of the Prime Time Access Rule would have no significant impact on King World's shows.[91] King World's shows, of course, are *Wheel of Fortune* and *Jeopardy.* These are highly successful shows, which one hardly would expect affiliates to abandon overnight if the Prime Time Access Rule were repealed. One would expect them to play out their runs. In the

[87]NBC at 15; *see also* Comments of the Motion Picture Association of America, MM Docket No. 94-123 (filed March 7, 1995) at 6 [hereinafter cited as "MPAA"]; *CAC* at 35.

[88]INTV, Exhibit 4.

[89]Friends at 2.

[90]MPAA at 4; Friends at 2.

[91]Coalition at 14.

long run, however, the market for such first-run programming would dry up.[92] Thus, the near-term fate of the most popular first run shows is no indicator of the condition of the market after repeal of the Prime Time Access Rule or off-network provision.

The Coalition similarly makes much ado about a previous King World prediction that commencement of even an inquiry concerning the Prime Time Access Rule would have "a negative impact on production of new, first-run syndicated programming."[93] Then, however, the Coalition offers no meaningful evidence whatsoever concerning the production of new first-run syndicated programming for prime access. It is happy to rest on the generality that NATPE held a successful convention (as if all that were sold at NATPE was shows for prime access).[94] The Coalition offers no list of new first-run access programs which were offered subsequent to the issuance of the *Notice* in this proceeding. In the absence of such evidence, the Coalition has far from substantiated its attempt to discredit the King World concern.

The networks' *Economic Analysis* also posits that the Prime Time Access Rule restricts competition in prime access by eliminating the networks as competitors. Nonetheless, as observed in INTV's *CAC*:

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[92]INTV at 50-51; *Economic Report* at 81.

[93]Coalition at 14, n.43.

[94]*Id.*

> [T]his is precisely what the rule was supposed to do. With the sunset of the network financial interest and syndication rules on the horizon, the competition from the networks which one might hypothesize is formidable. No longer constrained with respect to active syndication, the networks may control syndication of off-network programming. They also will exert enormous influence in the first-run market via their gatekeeper O&Os in the largest markets. Therefore, if non-network syndicators are to retain any meaningful access to the prime time audience, PTAR remains a necessary feature of the prime time television market.[95]

One also might wonder what all the fuss is about ! After all, the networks' consultant has predicted that "a significant number of affiliates in the top-50 markets would also be showing off-network programming in place of what is currently shown."[96] Might not this also eliminate the networks as competitors? In fact, of course, the networks --in the absence of the Prime Time Access Rule and the network financial interest and syndication rules -- would have three portals for entry into what is now prime access. The network could provide first-run network programming, first-run syndicated programming, or syndicated off-network programming. Thus, as noted, they would be quite formidable competitors, and on-network first-run producers would be relegated to non-prime time slots in affiliate program schedules.[97]

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[95]*CAC* at 22.

[96]*Economic Analysis* at 47.

[97]Friends at 3.

D. Effect On Viewers

Most arguments concerning the ultimate public interest judgments to be made and warranting responses are set forth in the networks' *Economic Analysis*. INTV's response to those arguments appears in its *CAC* . Suffice it to say, it is extraordinarily difficult to imagine any scenario in which a change in one hour of programming each day on three stations in 50 markets would be more beneficial than an increase in the number and vitality of new outlets offering as much as 24 hours of programming each day.

V. *TRANSITION*

INTV submits that adoption of any set sunset or transition mechanism id premature. This hardly is to say that the Prime Time Access Rule will not at some time in the future outlive its usefulness, but that time cannot be predicted with any certainty today.

INTV, however, does consider it appropriate to commence the debate as to how to determine when that time has arrived or as to what factors would be pertinent to establishment of an end-point for the Prime Time Access Rule. INTV, therefore, urges the Commission to look to the following ascertainable changes in the broadcast and video marketplaces in any consideration of transition mechanisms:

- The elimination of the UHF handicap. The emergence of new stations and networks has been problematic ever since 1952, when the Commission adopted its table of channel allotments for television. Not only are UHF stations handicapped *per se*, they must enter a market in which their competitors (with their superior facilities) already are entrenched and thriving. Elimination of the UHF handicap, therefore, is a vital precedent to elimination of any rule, which, like the Prime Time Access Rule, compensates in any meaningful way for the spectrum-based disadvantage which plagues new entrants into broadcast station and network operation.

- Parity between emerging and entrenched networks. Whereas INTV is dubious that six-network parity is possible as long as the UHF handicap persists, evaluation of factors which would establish that parity nonetheless exists cannot be ruled out. Such factors would include coverage parity, meaning not market coverage, but true household signal coverage, provision of comparable amounts of programming in prime time and other dayparts, and ratings competitiveness akin to that which now exists among the entrenched networks (*i.e.*, where their ratings are roughly equal and winners and losers are determined on the basis of relatively marginal differences in ratings performance.)

No way exists to predict today if or when these changes might occur. The Commission, however, certainly has the ability to conduct reviews of the broadcast and video marketplaces on a periodic basis. Just as certainly, the entrenched networks and others who feel put upon by efforts to promote even competition never would hesitate for a minute to make the Commission aware that changes of such scope and dimension were upon the land. Therefore, the Commission should refrain from the impossible task of predicting change and simply state its intent to monitor the video marketplace and consider the petitions of those who believe that "the time" has come.

INTV also reminds the Commission that a pre-announced sunset of the rules would have effect on the firms competing in the various relevant markets well in advance of the actual sunset date. Programming decisions are made and programming is acquired as much as three years in advance for exhibition in subsequent television seasons. Similarly, stations enter into multi-year contracts for syndicated programming, which commit then to use of specific programs often for several years into the future. Therefore, any transition mechanism must include a transition period which permits stations to exploit their existing program rights and plan sufficiently far ahead for the future.

VI. CONCLUSION

In view of the above, no compelling argument or evidence has been submitted which warrant repeal or modification of the Prime Time Access Rule or the off-network provision. INTV, therefore, urges the Commission to retain the Prime Time Access Rule, including the off-network provision, and terminate this proceeding.

Respectfully submitted,

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May 26, 1995

EXHIBIT ONE

A CRITICAL ASIDE AND COMMENTARY ON "AN ECONOMIC ANALYSIS OF THE PRIME TIME ACCESS RULE"

Prepared by the staff of the Association of Independent Television Stations, Inc.

May 26, 1995

AN ECONOMIC ANALYSIS OF THE PRIME TIME ACCESS RULE

(Excerpts)

An unstated but central element of the theory underlying PTAR is the notion the success -- whether measured in audience or profits -- of ABC, CBS, and NBC was attributable to market failures or economic misbehavior. In fact, it is now understood that the success of the broadcast networks -- as opposed to non-network distributors or local producers -- is attributable to the economic characteristics of the marketplace that make network distribution more efficient. Further, the fact that there were in 1970 only three networks was chiefly the result of the Commission's own spectrum allocation policies.[1]

It is now clear, for example, that the Commission's own spectrum allocation policies (in conjunction with the economies of scale of television networking) limited the number of program choices and sources available to viewers in 1970.[2]

CRITICAL ASIDE AND COMMENTARY

No one has suggested that PTAR is a response to network "misbehavior." On the other hand, the Commission's spectrum allocation policies are very much the root of the current competitive imbalance between the traditional networks (ABC, CBS, NBC) and the emerging networks (Fox, UPN, Warner Bros.). The finite number of VHF television channels long ago were gobbled up by the traditional networks. This has provided them an insurmountable distribution and coverage advantage *vis-a-vis* their emerging network competitors.[3]

The emerging networks enjoy the same economies of television networking as the traditional networks. Nonetheless, they fail to achieve audience levels comparable to those of the traditional networks.[4] The explanation lies in their coverage disadvantage, which results from the UHF handicap and the lack of stations with which to affiliate in some markets. Therefore, whereas emerging networks might achieve competitive parity with the traditional networks in terms of economies of scale, they remain handicapped by regulatory policies which structured the broadcast television industry to support only three predominantly VHF-distributed networks.

PTAR is a partial structural correction to offset the coverage advantages accorded the networks under the Commission's television channel allotment policies.[5]

At least with respect to prime time entertainment programming, the viewing public appears to prefer high quality, expensive productions that are broadcast nationwide to less expensive productions purchased or produced by local stations. Expensive, high-quality programs can be supported only by distributors who can aggregate many viewers and advertising revenue. In a competitive struggle between national advertiser-supported network programming and locally-produced or syndicated first-run programming, viewers' tastes and economies of scale are such that network programming will often do better than non-network programming. It was such forces, rather than any economic or competitive pathology in the structure or behavior of broadcast networks, that explained the relative success of ABC, CBS, and NBC at the expense of locally-produced or syndicated first-run programming.[6]

Whereas no one might quarrel with the idea that viewers prefer "network quality" programming, the popularity of first-run syndicated programming in prime access is competitive with network programming. For example, based on ratings for the week of April 10-16, *Wheel of Fortune* and *Jeopardy* garnered ratings which would have placed them in 14th and 32nd places, respectively, among network prime time programming. *Wheel of Fortune's* 12.6 rating was equivalent to that of ABC's *Thunder Alley*, which won its time period at 8:30 on Tuesday night. *Jeopardy's* 10.1 rating was identical to that of CBS's *The Nanny*, which won its time period at 8:00 on Monday night.[7]

These ratings achievements occurred despite lower potential audience levels during prime access as opposed to the network portion of prime time.

Therefore, programming nearly as popular as network programming now appears in prime access, dispelling the notion that the substitution of network programming for first-run syndication or local programming would enhance consumer welfare in any material fashion.

Consequently, when the Commission adopted the Prime Time Access Rule, it constrained the television industry away from what was (given the spectrum allocated to broadcasting) the competitive equilibrium outcome. There is a general presumption that such policies reduce consumer welfare . In this case, theory predicts that the quality of programming available to the viewing public will decline, making viewers worse off. Conceivably, such a price might be worth paying if there were a more compensating increase in diversity or other non-economic values. But in no way could or did PTAR increase the number of viewer choices available at any time, because the number of broadcast stations remained unaffected.[8]

One must understand that the competitive equilibrium envisioned here is measured against a scale biased in the three traditional networks' favor by the "spectrum allocated to broadcasting." The wider coverage accorded the three traditional networks by their predominantly VHF affiliate bases may be no market "failure," but it does create a market in which entrenched players enjoy insurmountable advantages. Consequently, in any valid sense of the term, a world without PTAR hardly may be characterized as one of "competitive equilibrium." Therefore, no presumption ought lie that PTAR reduces consumer welfare.

Furthermore, as noted above, the proposition that PTAR has reduced the quality of programming available to the public is dubious. This "price," if it exists at all has been offset many times over by the increase in the number of stations (and, now, networks) spawned in large part by PTAR. As demonstrated by INTV and its economic consultants, PTAR has contributed directly and materially to the increase in the number of independent stations.[9] This increase in the number viewer choices is complemented by continuing improvement in the quality of programming made available to consumers on these new independent stations. These improvements in programming (now culminating in the formation of two more emerging networks) also result from the contribution of PTAR to the economic vitality of independent stations (including affiliates of the emerging networks).

The only way that ABC, CBS, or NBC could ever have been perceived as having "dominance" was to assume that the networks were under unitary control or acted in concert. Such an assumption cannot be supported with any facts, and would run counter to the many manifestations of vigorous competition among the networks, particularly in their programming decisions.

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Though ABC, CBS, and NBC have had similar audience shares, their rivalry for audiences and advertising dollars has caused a continual shifting of their relative positions.[10]

The fact does remain, however, that the three traditional networks enjoy a common "dominant" position as predominantly VHF-affiliate based networks. Furthermore, as noted above, their "relative positions" are bunched closely at the high end of the scale, while all three emerging networks reside a relatively lower points. Thus, the three traditional networks may compete with each other on near equal terms, they compete with emerging networks from a common dominant position.

Another feature of the three traditional networks' position is the finite number of program slots and the finite advertising spot inventory. INTV's economic consultants have demonstrated the power this has given the networks to raise advertising rates with near impunity -- and their incentive to drive off other competing entities which offer an advertising vehicle which begins to approach the efficiency and effectiveness of advertising on the three traditional networks (*i.e..*, barter syndicators and emerging networks).

Competition among ABC, CBS, and NBC is further indicated by the quality and expense of their programming. As discussed below, programming expenditures by ABC, CBS, and NBC per half-hour show are several times those of independent syndicators.

Nonetheless, as observed by INTV's economic consultants:

> While it is common to dismiss first-run programs as inexpensive, the annual production budget for a typical prime time access period program is comparable to that for an "expensive" prime time network half-hour program. The average annual production cost for first run series targeted for the access period in proprietary data supplied by Paramount and King World was $17.7 million in 1994. By contrast, the annual budget for a prime time network sitcom probably runs in the neighborhood of $13 million to $15 million. Each first run episode is less expensive than its network counterpart, but there are a lot more of them. Whereas networks typically commission 22 to 24 episodes a year for a prime time situation comedy, 175 to 195 episodes per year are typical for game shows while up to 260 episodes may be produced annually for magazine programs.[11]

Additionally, as noted above, popular first-run programs' ratings do now rival the ratings of network programming.

The growth of independent stations referred to below is explained in significant part by their carriage on cable systems into an ever growing number of households. The rising number of subscribers to cable has also served to eliminate or reduce greatly the so-called "UHF handicap." This handicap refers to the disadvantage UHF independent stations have had in attracting a large audience in the past, principally due to the technical limitations television viewers have had in receiving over-the-air signals from UHF stations. Cable television, as well as other television delivery modes, greatly reduces or eliminates those technical limitations. See Appendix C.[12]

UHF stations continue to operate at a genuine disadvantage, which cable has exacerbated. As INTV's economic consultants concluded:

> Overall, the growing prevalence of cable is associated with no decrease in the economic gap UHF stations face vis-a-vis VHF stations. One reason for this fact is that while UHF signal quality is improved by cable carriage, this is more than offset by the additional channels that are added when a home changes from a broadcast delivery system to a cable delivery system. Also, UHF stations have suffered historically from disadvantageous channel positioning on cable systems not to mention complete lack of carriage in many instances. Moreover, each cable channel reduces at the margin the shares and ratings of independent and affiliate broadcast stations, but is more competitive vis-avis independents than affiliates.[13]

As noted above, this disparate effect of cable on UHF stations is confirmed by the audience data supplied in the *Economic Analysis* itself.[14]

Furthermore, actual cable carriage of even local UHF stations is far from market wide or comparable to VHF cable carriage. Even assuming full carriage under the current must-carry rules, no station need be carried if it fails to place a good quality signal over the system's head-end. 47 CFR §76.55(c)(3). Thus, cable offers only limited ability to compensate for the expanded geographic coverage by VHF stations.[15]